

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

HYACINTH SIMMS

Debtor,

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HYACINTH SIMMS,

Plaintiff,

-against-

JP MORGAN CHASE BANK, TOWER GROUP, INC.
MORANT INSURANCE AGENCY INC., AFFILIATED
ADJUSTMENT GROUP LTD., ASSURANT PROPERTY
ADVANTAGE A/K/A ASSURANT SPECIALTY
PROPERTY'S LENDING, SOLUTIONS GROUP, C.J.
RUBINO & COMPANY, INC., MSW ADJUSTMENT
GROUP, INC., DG CUSTOM BUILT HOMES &
REMODELING,

Defendants.
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Case No. 23-40070-NHL

Adv. Pro. No. 23-01070-NHL

**AFFIRMATION OF
DANIEL EL ARNAOUTY
ESQ., IN SUPPORT OF
DEFENDANT CJ RUBINO
& COMPANY, INC.'S
MOTION TO DISMISS
THE COMPLAINT
PURSUANT FED. R. CIV.
P. 12(b)(6) AND FED. R.
BANKRP. P. 7012**

CHAPTER 13
HON. NANCY H.
LORD

Daniel El Arnaouty, Esq. an attorney duly admitted to this Court, do hereby affirm the following pursuant to 28 U.S.C. §1746:

1. I am an Associate attorney with the law firm of Tysin & Mendes, LLP, attorneys for Defendant C.J. Rubino & Company, Inc. (hereinafter "CJ Rubino"), in the above-captioned matter.

2. I submit this affirmation in support of CJ Rubino's instant Motion to Dismiss the Plaintiff, Hyacinth Simms' (hereinafter "Plaintiff") Complaint with prejudice as against CJ Rubino pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which is made applicable to this Adversary Proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure.

3. Annexed hereto as **Exhibit "A"** is the March 28, 2016 Summons and Complaint in an action commenced in Supreme Court, Nassau County under Index No. 602058/2016 (the "2016 Action") by the Plaintiff. The Plaintiff has proffered the same claims as against CJ Rubino in her 2016 Action as she has now in the instant adversary proceeding before the Court.

4. A motion to dismiss the 2016 Action due to the Plaintiff's failure to prosecute said 2016 Action resulted in the Court's Decision and Order, dated April 24, 2019, which wholly dismissed the Plaintiff's 2016 Action as against all parties, which naturally included CJ Rubino. A copy of the Court's April 24, 2019 Decision and Order is annexed hereto as **Exhibit "B"**.

5. The Plaintiff has now commenced the instant adversary proceeding in which she alleges the same causes of action she initially proffered in her 2016 Action. A copy of the Plaintiff's Summons and Complaint in the instant adversary proceeding before the Court is annexed hereto as **Exhibit "C"**.

6. CJ Rubino timely filed an Answer to the Plaintiff's Complaint herein, denying any and all allegations of improper actions or negligence on CJ Rubino's behalf. A copy of CJ Rubino's Answer to the Plaintiff's instant Complaint is annexed hereto as **Exhibit "D"**.

Dated: New York, New York
December 11, 2023

Yours, etc.
TYSON & MENDES, LLP

By: *Daniel El Arnaouty*
Daniel El Arnaouty, ESQ.
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